

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re)	
)	
SCHURZ COMMUNICATIONS, INC.)	
KSPR(DT), Springfield, Missouri)	
FCC Facility ID No. 35630)	MB Docket No. _____
)	
GRAY TELEVISION LICENSEE, LLC)	
KYCW-LD, Springfield, Missouri)	
FCC Facility ID No. 49186)	
)	
Petition for Waiver of Commission Program)	
and System Information Protocol (PSIP))	
Rules to Provide an Alternative PSIP Virtual)	
Channel to KSPR(DT) and to KYCW-LD)	

To: Marlene Dortch, Secretary
Attention: Chief, Media Bureau

**JOINT PETITION FOR WAIVER AND REQUEST FOR
REASSIGNMENT OF PSIP CHANNELS**

Gray Television Licensee, LLC (“Gray”) and Schurz Communications, Inc. (“Schurz”) (collectively, the “Joint Petitioners”) hereby jointly request waiver of the FCC’s Program and System Information Protocol (“PSIP”) Rules for KSPR(DT), Springfield, Missouri (FCC Facility ID No. 35630) and KYCW-LD, Springfield, Missouri (FCC Facility ID No. 49186) (collectively, the “Stations”) for changes in virtual major channel numbers concurrent with changes in network affiliation. Grant of the requested waiver is appropriate because making the PSIP reassignments concurrent with the affiliation changes will avoid viewer confusion in Springfield and better effectuate the FCC’s virtual channel policies than retention of the current PSIP assignments for the Stations. Moreover, the proposed changes in virtual channel will affect only the television stations of the Joint Petitioners.

BACKGROUND

For many years, television viewers in the Springfield, Missouri Designated Market Area (“DMA”) have received ABC programming on virtual channel 33.1 from Schurz’s KSPR(DT) their local ABC affiliate. KSPR(DT) also carries CW network programming on virtual channel 33.2, through the rebroadcast of the CW programming carried on Gray’s KYCW-LD. Thus, viewers have come to expect their local ABC and CW affiliate programming to be available on virtual channels 33.1 and 33.2, respectively, and both Gray and Schurz have invested significant resources in associating their local and network-affiliated programming with those channel assignments.

Recently, Gray reached agreement with Schurz and ABC for the assignment of KSPR(DT)’s rights under its ABC affiliation agreement to Gray’s KYCW-LD. Gray plans to continue to broadcast CW programming on KYCW-LD’s D2 multicast signal. To ensure that viewers continue to receive the local ABC and CW affiliates on their current channels, the Joint Petitioners seek waiver of the FCC’s PSIP Standard¹ and request assignment of alternative PSIP virtual channels to KSPR(DT) and KYCW-LD—specifically, a switch of major channel numbers such that (1) Schurz’s KSPR(DT) would be assigned virtual major channel 15, which is currently held by Gray’s KYCW-LD, and (2) Gray’s KYCW-LD would be assigned virtual channel 33, which is currently held by Schurz’s KSPR(DT). As a result of this change, which would be implemented concurrently with Schurz’s assignment of the Springfield, Missouri, ABC affiliation agreement to Gray, the consummation of the assignment would not disrupt established

¹ ATSC A/65C (“ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable, Revision C with Amendment No. 1, dated May 9, 2006”) (the “*PSIP Standard*”), incorporated in the FCC’s rules by 47 C.F.R. § 73.682(d).

viewing patterns or confuse viewers accustomed to finding ABC programming on virtual channel 33.1 and CW programming on virtual channel 33.2.

The requested assignments would be consistent with Springfield television viewers' long-established expectations and would preserve the investment that Gray and Schurz have made in ensuring consistent availability of a high-quality ABC and CW programming service on Channels 33.

The Joint Petitioners requests are technically feasible because no station with service contours overlapping those of any of the stations uses the virtual channels associated with the over-the-air RF channel of KSPR(DT) or KYCW-LD.² The change will affect only KSPR(DT) and KYCW-LD, which are licensed to the Joint Petitioners, each of which fully supports the proposed change. Under these circumstances, the Joint Petitioners' requested virtual channel reassignments would unquestionably serve the public interest and the FCC's policies far better than continuation of the current virtual assignments after the local ABC affiliation moves to Gray.

ARGUMENT

Pursuant to Section 1.3 of the FCC's rules, waivers are justified when particular facts make insisting on strict compliance with the rules inconsistent with the public interest.³ Specific considerations that can justify waivers include hardship, equity or more effective implementation

² See *infra* note 13.

³ 47 C.F.R. §1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

of overall policy on an individual basis.⁴ Waivers are appropriate if (i) a party demonstrates special circumstances and (ii) deviation from the general rule would benefit the public interest.⁵

The FCC historically has viewed petitions for waiver of the *PSIP Standard* more favorably than those seeking waiver of most other rules, because the FCC foresaw when it adopted the *PSIP Standard* that there would be instances when the literal application of the standard would not advance the FCC's objectives or the public interest. In its *Second Periodic Review*, the FCC expressly recognized that waivers would be an important part of virtual channel regulation: "[t]o the extent broadcasters have a unique situation that is not provided for in PSIP, the FCC may grant exceptions on a case-by-case basis."⁶ The Media Bureau (the "Bureau") has held that a waiver of the *PSIP Standard* is warranted if (i) the circumstances present a "unique situation" not accounted for by the standard and (ii) the requested waiver is technically feasible.⁷

Under this standard, the Bureau has readily granted technically feasible waivers of the *PSIP Standard* in a wide variety of circumstances.⁸ For example, in *Weigel Broadcasting Company*, the Bureau granted a waiver of the *PSIP Standard* for the use of alternative virtual channels solely to avoid viewer confusion when two stations voluntarily swapped network

⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

⁵ *Network IP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

⁶ *Second Periodic Review*, *supra*, 19 FCC Rcd at 18346.

⁷ *Weigel Broadcasting Company*, Letter of Hossein Hashemzadeh, Deputy Chief, Video Division, Media Bureau, dated August 16, 2012.

⁸ See, e.g., *Weigel*, *supra*; see also *Entravision Holdings, LLC* (KETF-CD, Laredo, Texas), http://licensing.fcc.gov/cgi-bin/prod/cdbs/forms/prod/getimportletter_exh.cgi?import_letter_id=31837; February 17, 2012 (waiver granted to avoid confusion resulting from foreign station's use of the virtual channel that the *PSIP Standard* assigned to licensee seeking waiver); *Francois Leconte* (WDFL-LD, Miami, Florida) (November 27, 2013) (waiver granted for use of alternative virtual channel to avoid confusion from transmitter site relocation that resulted in service contour overlap of two stations with the same virtual channel).

programming.⁹ The Bureau quoted approvingly the petitioner’s statement that “[g]rant of the instant waiver request would allow the proposed programming swap to be completely transparent to viewers on both stations, because they will be able to continue to tune to the virtual channel number already associated with the underlying content” — meaning, in that instance, the network programming source.¹⁰ The Bureau also found that the proposed waiver was “technically feasible,” because the stations’ protected service contours would not overlap with the protected service contours of other stations using the same major channel numbers.¹¹

Joint Petitioners’ present request satisfies both the FCC’s general waiver standards and the specific standards the Bureau has developed for PSIP waivers. Joint Petitioners’ requested PSIP assignments would better serve the public interest in this case than literal application of the *PSIP Standard*. The *PSIP Standard* was adopted to limit consumer confusion and preserve broadcasters’ established good will in their traditional channel positions.¹² Both of these policies favor assigning the requested PSIP Channels to KSPR(DT) and KYCW-LD. Viewers are accustomed to finding ABC-affiliated programming now airing on KSPR(DT) on Channel 33.1 and CW-affiliated programming on Channel 33.2. Absent the requested waivers, viewers would be forced to learn new channel positions for two of their major local affiliates, causing significant inconvenience. At the same time, enforcing the *PSIP Standard* would not offer viewers any benefit at all. Waivers were designed for cases like this where the request offers significant net benefit versus virtually no cost, and this one should be granted.

The requested waiver also satisfies the more specific PSIP waiver standards established by the Bureau. First, the instant request presents a “unique situation” not provided for in the

⁹ *Id.*

¹⁰ *Id.* at 2.

¹¹ *Id.*

¹² *Second Periodic Review, supra*, 19 FCC Rcd at 18346.

PSIP Standard. The *PSIP Standard* lacks any mechanism for adjusting PSIP assignments where, as here, the standard assignment rules would lead to unnecessary viewer confusion. The logic of the policies underlying the PSIP Standard – protection of consumers and preservation of historical broadcaster investments – requires that the programming and service offered on a particular virtual channel number remain relatively stable. In cases where dramatic programming shifts take place, application of the PSIP channel assignment rules leads to consumer confusion and the loss of the value of prior investments to associate particular programming with particular channel numbers. Assigning KSPR(DT) to PSIP channel 15 and KYCW-LD to PSIP channel 33 will ensure that Springfield viewers are not confused or inconvenienced. It will likewise protect the value and customer goodwill built up by the Joint Petitioners’ reliable delivery of high-quality local service to the Springfield Community. These results are consistent with the Commission’s stated goals in establishing the *PSIP Standard*. The requested waiver therefore satisfies the first prong of the Bureau’s PSIP waiver test.

Second, the proposed waiver is technically feasible. The operation of KSPR(DT) and KYCW-LD on the requested PSIP channels creates no technical challenges. The instant request does not require any of the stations’ protected service contours to overlap the protected service contours of other stations using corresponding virtual or RF channel numbers.¹³ The two stations whose licensees are jointly requesting the waiver for the exchange of PSIP channels are the only stations affected. Thus, the Bureau’s technical feasibility standard also is met here.

In sum, a grant of Joint Petitioners’ requested waiver would advance rather than contravene the principal policy goals underlying the FCC’s adoption of the *PSIP Standard*.

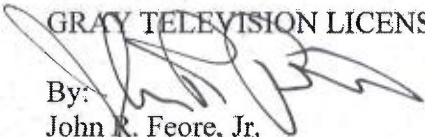
¹³ See Exhibit A. Exhibit A demonstrates that no contour overlap will occur if KSPR(DT) and KYCW-LD are assigned the proposed RF or virtual channels.

Conclusion

For the reasons set forth above, Joint Petitioners request that the Commission grant the requested waivers.

Respectfully submitted,

GRAY TELEVISION LICENSEE, LLC

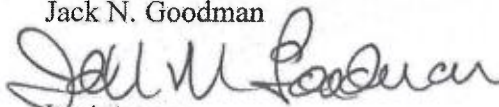
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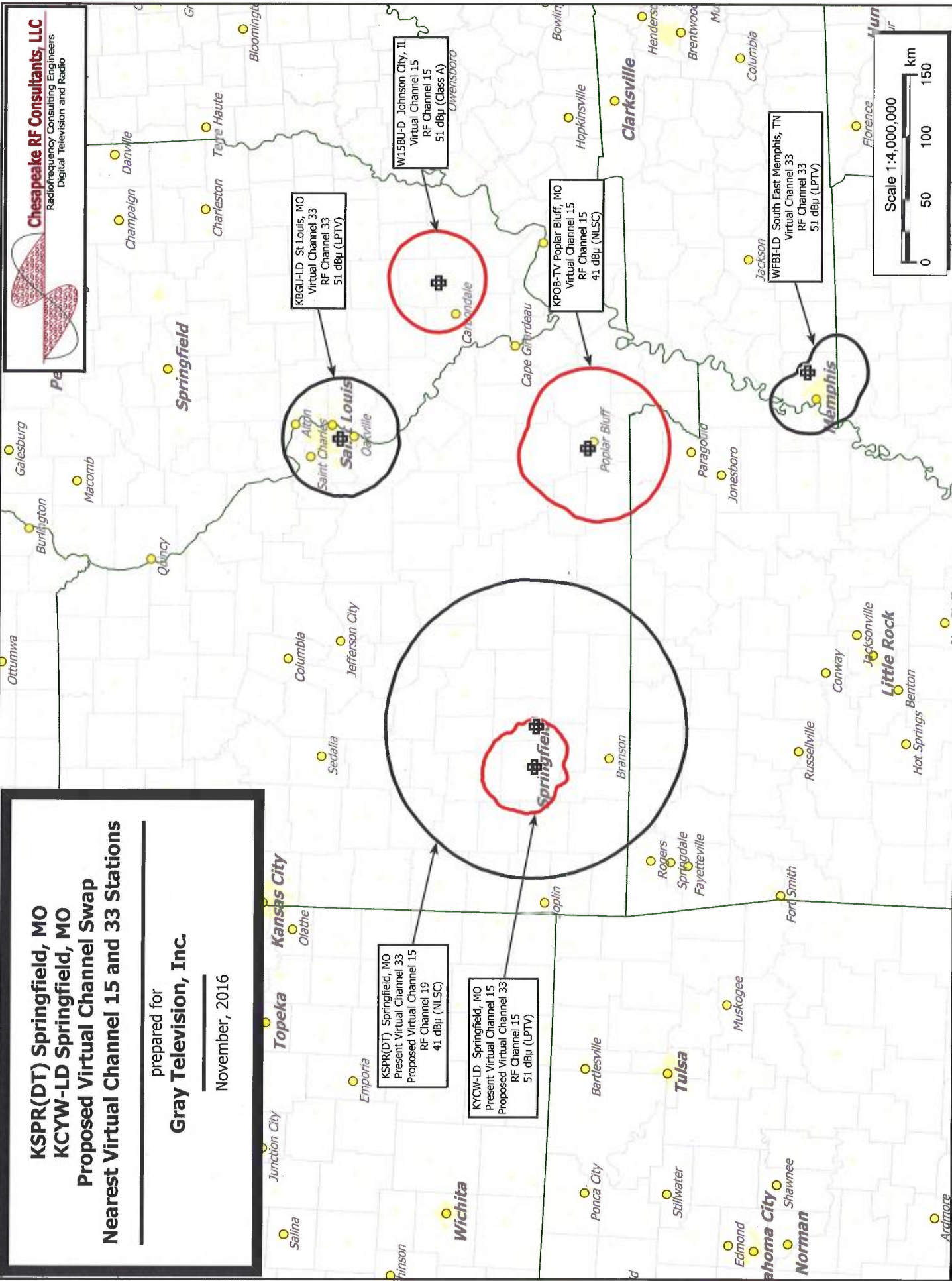
January 6, 2017

Exhibit A

**KSPR(DT) Springfield, MO
KCYW-LD Springfield, MO
Proposed Virtual Channel Swap
Nearest Virtual Channel 15 and 33 Stations**

prepared for
Gray Television, Inc.

November, 2016



CERTIFICATE OF SERVICE

I, Rayya Khalaf, of Cooley LLP do hereby certify that a true and correct copy of the foregoing "Petition for Waiver" was served by first-class U.S. mail, postage-prepaid, unless otherwise indicated, on January 6, 2017 on the following:

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